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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 ANTHONY R. FLAAEN,

9 Plaintiff,

v.

10 PRINCIPAL LIFE INSURANCE
11 COMPANY,

12 Defendant.

CASE NO. C15-5899 BHS

ORDER REQUESTING
ADDITIONAL BRIEFING

13 This matter comes before the Court on Plaintiff Anthony R. Flaaen's ("Flaaen")
14 trial brief on the administrative record (Dkt. 33) and Defendant Principal Life Insurance
15 Company's ("Principal") motion for judgment on the administrative record (Dkt. 34).

16 On May 31, 2017, the parties filed the instant motions in relation to a trial on the
17 administrative record. Dkts. 33, 34. On July 20, 2017, the Court held a hearing allowing
18 the parties an opportunity to provide oral argument in addition to the briefs. Dkt. 41.
19 During oral argument, Flaaen's counsel touched on some issues of contract interpretation,
20 such as ambiguities should be resolved in his client's favor. While this may be true in a
21 *de novo* review, none of the briefs explicitly touch on the issues of interpreting the policy
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1 in question. For example, one of the most significant disputes in this case is whether
2 Principal may rely upon the median wage for a particular occupation in determining
3 gainful employment. The policy defines gainful occupation as “Employment in which
4 the Member could reasonably be expected to earn an amount equal to or greater than the
5 Primary Monthly Benefit.” AR 38. This is a fairly vague definition. Under an abuse of
6 discretion standard, the Court would simply review Principal’s interpretation and
7 implementation of the language. However, under *de novo* review, the policy would seem
8 to be subject to the general rules of contract interpretation.

9 Furthermore, Flaaen contends that Principal “specifically laid out requirements for
10 a proper vocational review.” Dkt. 39 at 7. It is unclear if these were actually standards
11 used to evaluate relevant jobs and where the requirements originated from.

12 Therefore, the Court requests additional briefing on the issues identified herein.
13 Parties may file simultaneous supplemental briefing by August 18, 2017 and
14 supplemental replies by August 25, 2017. The Clerk shall renote the motions for
15 consideration on the Court’s August 25, 2017 calendar.

16 **IT IS SO ORDERED.**

17 Dated this 9th day of August, 2017.

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20 BENJAMIN H. SETTLE
21 United States District Judge
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